



Review of Commissioner's Order / Re-arguments / Motion to Reopen

FAMILY COURT OF THE STATE OF DELAWARE

Related Forms

Form 455 – Request
for a Review of
Commissioners Order

Form 191, 192, 193 –
Generic Motion Packet

All forms can be found on
the Family Court
Website at

<https://courts.delaware.gov/family>

Family Court Contact Information

New Castle County

Leonard L Williams
Justice Center
500 N. King Street
Wilmington, DE 19801
302-255-0300

Kent County

Family Courthouse
400 Court Street
Dover, DE 19901
302-672-1000

Sussex County

Family Courthouse
22 The Circle
Georgetown, DE 19947
302-855-7400

What is a Review of Commissioner's Order?

A Request to Review a Commissioner's Order is a way of appealing a Commissioner's decision. By filing this request, you are asking a judge to make a new determination about the portions of the Commissioner's Order to which you object.

How do I Request a Review of Commissioner's Order?

You must file a Request for Review of Commissioner's Order with the Court. These forms are available at the Family Court Resource Centers and on our webpage <http://courts.delaware.gov/family>

When should I file?

You must file a request for Review Commissioner's Order within **30 days** from the date of the Commissioner's Order. If you fail to file within that timeframe, the Court may not consider your request. You may not appeal a consent or default Order.

What will happen after I file?

After you file your Request for Review of Commissioner's Order, the Court will send you a letter explaining how much it will cost to have a transcript of the hearing prepared. After you have paid for the transcript, it will be sent along with your Request for Review to a Judge for a decision. The Judge will issue an Order informing you of their decision. The Judge can either deny your request, send the Order back to the Commissioner for their reconsideration or issue a new Order.

What if I cannot afford the transcript preparation?

If you cannot afford to pay for the transcript, you may file a Motion to Waive Transcript Fees. In this motion, you should clearly explain to the Court why you cannot pay the costs associated with the preparation of the transcript.

What is a Motion for Re-argument?

A Motion for Re-argument is a request that the Court reconsider an argument that was made during a hearing. The purpose is not to reargue an entire case, rather, to ask the Court to reconsider its decision by briefly rearguing one's position.

Why should I file a motion for re-argument?

You should file a Motion for Re-Argument whenever you want the Commissioner who decided the case to reconsider his or her decision. It is especially useful if you think the Commissioner misunderstood some of the evidence, made an unintentional mistake, or you don't understand the Commissioner's reasoning. There is no filing fee for a Motion for Re-argument.

When do I file a Motion for Re-argument?

You must file a Motion for Re-argument within 15 days from the date of the Court Order. Motions to Reargue are governed by Family Court Rule of Civil Procedure 59.

How do I file a Motion for Re-argument?

You may obtain a Generic Motion form from the Family Court Resource Center or on our webpage at [http:// www.state.de.us/family](http://www.state.de.us/family). In your Motion for Re-argument, you must briefly and distinctly state your reasons for requesting that the Court reconsider its decision.

What will happen after I file?

After you file your Motion for Re-argument and the Respondent is served with that Motion, the Respondent will have 10 days to file a brief answer to each ground asserted in the Motion. Then, the Court will review the Motion and Answer and determine whether Re-argument will be granted.

Can I file both a Motion for Re-argument and a Review of Commissioner's Order?

You may, but it is not necessary. You have 15 days from the date of the Order to file a Motion for Re-argument. You have 30 days to file for a Review of Commissioner's Order. However, a timely filing for Re-argument stops the time to file a Review of Commissioner's Order. In other words, if your Motion for Re-argument is unsuccessful, you will then have 30 days to file a Review of Commissioner's Order.

What is a Motion to Reopen?

A Motion to Reopen is the only available remedy to get the Court to reconsider a decision after the period allowed for a Motion for Re-argument or Review of a Commissioner's Order. It is especially useful to fix typographical or mathematical errors that are discovered later in time, or to present newly discovered evidence. However, it is also available to persuade the Court for reasons of law or fairness that the original Order should not have issued.

A litigant should carefully read Family Court Civil Rule 60 before filing a Motion to Reopen. In most instances, the person who files such a motion will have to persuade the Court that the alleged flaws in the original decision could not have been fixed by use of the usual appeal process such as a timely Motion for Re-argument or a Review of a Commissioner's Order.

A Motion to Reopen can also be filed if you could not attend the hearing because of an emergency or lack of notice. In your motion, you should describe exactly why you did not attend the hearing on the scheduled date and time. If there was an emergency or some other good reason that prevented you from attending, attach documents to your Motion to Reopen that show why you were not able to attend the hearing. A filing fee is required on a Motion to Reopen in most types of cases.

How do I file a Motion to Reopen?

You may obtain a Generic Motion form from the Family Court Resource Center or on our webpage at [http:// www.state.de.us/family](http://www.state.de.us/family).

The Family Court of the State of Delaware

In and For ☐ New Castle County ☐ Kent County ☐ Sussex County

REQUEST FOR REVIEW OF A COMMISSIONER'S ORDER

Petitioner

v. Respondent

| | | |
|--------------------------------|--------------------------------|-----------------|
| Name | Name | File Number |
| Street Address | Street Address | |
| Apt. or P.O. Box Number | Apt. or P.O. Box Number | Petition Number |
| City State Zip Code | City State Zip Code | |
| Attorney Name and Phone Number | Attorney Name and Phone Number | |

(If party seeking the Review of a Commissioner's Order is the Original Petitioner in a **PROTECTION FROM ABUSE** action, please **DO NOT DISCLOSE YOUR ADDRESS** above, as a copy of this request must be mailed to the Respondent.)

1. I am the original ☐ Petitioner ☐ Respondent in this action.

2. Nature of Proceedings:

3. _____, Petitioner herein, appeals the Order Entered by
_____ Commissioner and dated _____

4. Objections to the Commissioner's Order (*Please set forth specific objections to the Commissioner's Order, and describe in detail the basis for each objection*):

5. I hereby request that a transcript of the proceedings before the Commissioner be prepared

☐ I certify that I will pay all costs associated with the preparation of the transcript.

☐ I certify that I have completed and attached an Affidavit to Proceed In Forma Pauperis and Motion to Waive Transcript Fees

Date

Petitioner/Petitioner's Attorney

VERIFICATION

STATE OF DELAWARE)
) ss.:
COUNTY OF _____)

_____, being duly sworn, says:

I _____, affirm that a true and correct copy of this Request for Review of a Commissioner's Order was placed in the U.S. mail on the _____ day of _____, _____ and sent to the last known address of the party or attorney, being _____, first class postage prepaid.

Movant/Attorney/Court Staff

Subscribed and sworn before me on this date,

Date

Clerk of Court/Notary Public

NOTE: IN PROTECTION FROM ABUSE CASES ONLY, THE AFFIDAVIT OF MAILING ONLY APPLIES WHEN THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL PETITIONER. IF THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL RESPONDENT IN THIS ACTION, A TRUE AND CORRECT COPY OF THE MOTION WILL BE SENT TO THE ORIGINAL PETITIONER BY COURT STAFF.

IMPORTANT INFORMATION REGARDING

THE FILING OF A MOTION

Presenting a motion before the Court requires the completion and filing of three separate documents.

The Generic Motion document (Form 191) must be filed along with the Notice of Motion (Form 192) and Form of Order (Form 193) documents.

The Family Court of the State of Delaware

In and For ☐ New Castle County ☐ Kent County ☐ Sussex County

MOTION FOR _____

Petitioner

Respondent

| | | |
|--|--|-----------------|
| Name | Name | File Number |
| Street Address (including Apt) | Street Address (including Apt) | |
| P.O. Box Number | P.O. Box Number | Petition Number |
| City/State/Zip Code | City/State/Zip Code | |
| Date of Birth | Date of Birth | |
| Attorney Name | Attorney Name | |
| Interpreter needed? <input type="checkbox"/> Yes <input type="checkbox"/> No Language | Interpreter needed? <input type="checkbox"/> Yes <input type="checkbox"/> No Language | |

A PROCEEDING involving _____ having been filed heretofore in this Court,
Movant hereby moves the Court for _____ and, in
support thereof, alleges the following facts:

SWORN TO AND SUBSCRIBED
before me this date,

Movant/Attorney

Clerk of Court/Notary Public

Print Name

I, the Movant, affirm that a true and correct copy of this Motion was placed in the U.S. Mail on this date
_____, and sent to the other party or attorney at the address listed on the petition, being
_____, first class postage
pre-paid.

SWORN TO AND SUBSCRIBED
before me this date,

Movant/Attorney

Clerk of Court/Notary Public

In and For ☐ New Castle County ☐ Kent County ☐ Sussex County

Petition No.:

TO:

PLEASE TAKE NOTICE that the attached Motion for _____ is herewith presented to the Court for consideration. If you are opposed to this motion, you must file a written response with the Court within ten (10) days of the service of this motion. If no response is timely filed, the motion may be decided without further opportunity for you to be heard on the matter. Family Court Rules, Rule 7(b)(2).

Movant/Attorney

Print Name

| |
|-------------------------------------|
| Name and address of Movant/Attorney |
| Street Address (including Apt) |
| P.O. Box Number |
| City/State/Zip Code |

The Family Court of the State of Delaware

(1) In and For ☐ New Castle County ☐ Kent County ☐ Sussex County

| | | |
|-----------------|---|-------------------------------|
| _____ (2) _____ |) | File No.: _____ (4) _____ |
| Petitioner |) | |
| v. |) | Petition No.: _____ (5) _____ |
| _____ (3) _____ |) | |
| Respondant |) | |
| |) | |
| |) | |
| |) | |

NOTICE OF MOTION

TO: (6)

PLEASE TAKE NOTICE that the attached Motion (7) _____ is herewith presented to the Court for consideration. If you are opposed to this motion, you must file a written response with the Court within ten (10) days of the service of this motion. If no response is timely filed, the motion may be decided without further opportunity for you to be heard on the matter. Family Court Rules, Rule 7(b)(2).

_____ (8) _____
Petitioner/Attorney

_____ (9) _____
Date

_____ (10) _____
Movant/Attorney

| |
|-------------------------------------|
| Name and address of Movant/Attorney |
| Street Address |
| P.O. Box Number |
| City/State/Zip Code |

FAMILY COURT FORMS INSTRUCTIONAL MANUAL

SUBJECT: Form 192, Notice of Motion (Motion Package)

I. Definition

Form 192 is one of two documents that must accompany a motion at the time it is filed in Family Court in accordance with Family Court Rule 7(b)(1). Its purpose is to act as an informational cover sheet which the movant attaches to the copy of the motion that he/she is sending to the other party(ies) in the matter. In this way, the other party(ies) are notified that a motion has been filed in Family Court on a matter in which they have an interest.

II. Preparation

Form 192 is prepared by the movant, or party filing the motion. The original is submitted along with the motion (Form 191) and the form of order (Form 193) at the time of the filing of the motion in Family Court. It is the responsibility of the movant to send a copy of all three forms, completed as appropriate, to the other party(ies). Once it has been filed with the Court, the motion package is sent to Case Processing and then to a judge/commissioner for review. The notice of motion must be served according to Family Court Civil Rule 5(c).

III. Components

The following is entered in the appropriately numbered area(s):

1. An "x" to indicate the appropriate county of the Court.
2. The name of the petitioner.
3. The name of the respondent.
4. The Family Court file number (if known).
5. The Family Court petition number (if known).
6. The names and addresses of the parties to the case and of their attorneys, if applicable.
7. The type of motion being filed.
8. The signature of the attorney/party filing the motion.
9. The date that the motion is being filed.
10. The name and address of the attorney/party filing the motion.

